

**NEW YORK STATE SUPREME COURT
NEW YORK COUNTY**

-----	X		
WARNER WOLF,	:		
	:	Plaintiff,	Index No.:
	:		
v.	:		COMPLAINT
	:		
DON IMUS, CHAD LOPEZ, MIKE MCVAY and	:		<u>Jury Trial Demanded</u>
CRAIG SCHWALB, all in their individual and	:		
professional capacities,	:		
	:		
	:	Defendants.	
-----	X		

Plaintiff Warner Wolf (“Plaintiff”) hereby alleges against Defendants Don Imus, Chad Lopez, Mike McVay and Craig Schwalb (collectively, “Defendants”) as follows:

PRELIMINARY STATEMENT

1. Plaintiff Warner Wolf enjoyed a long, storied career as a legend in the sports broadcasting world, having coined such iconic phrases as “Let’s go to the videotape.” However, not even a broadcasting legend like Mr. Wolf was safe from the well-documented discriminatory behavior of the infamous radio personality Don Imus. To the contrary, Defendant Imus routinely made inappropriate comments about Plaintiff’s age, including stating that it was “time to put [Mr. Wolf] out to pasture” and “shoot him with an elephant dart gun.”

2. Indeed, despite Mr. Wolf’s years of loyal service and unparalleled broadcasting caliber, Defendants’ discriminatory conduct towards Plaintiff came to a head on October 31, 2016, when Defendants unlawfully terminated Mr. Wolf’s employment based upon his age, replacing him with a sportscaster decades his junior. Adding insult to injury, after terminating Plaintiff’s employment, Defendants and non-party Cumulus Media, Inc. refused to honor a severance clause in Plaintiff’s employment agreement that provided for 26 weeks of severance pay – amounting to \$97,500.00 – in the event of Plaintiff’s termination.

3. As the “videotape” in this case will unquestionably show, Defendants have failed to adhere to New York’s anti-discrimination laws, and have unlawfully discriminated against Mr. Wolf based upon his age. So, in the words of Plaintiff, let’s go to the videotape.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to New York Civil Practice Laws and Rules (“CPLR”) § 301.

5. Venue is proper in this County pursuant to CPLR § 503 as at least one Defendant resides in New York County and a substantial part of the events giving rise to Plaintiff’s claims took place in New York County.

PARTIES

6. Plaintiff is a legendary sportscaster and a former employee of Defendants and non-party Cumulus Media, Inc (“Cumulus”). Plaintiff currently resides in Naples, Florida. At all relevant times, Mr. Wolf fell within the definition of a “person” and/or “employee” under all applicable statutes. Mr. Wolf is currently 80 years old.

7. Defendant Imus is an infamous radio broadcaster and the host of the radio show Imus in the Morning (“Imus in the Morning” or the “Show”), which, at all relevant times aired on WABC Radio (“WABC”) from New York, New York. Upon information and belief, Defendant Imus currently resides in Brenham, Texas. At all relevant times, Defendant Imus was Plaintiff’s employer within the meaning of all applicable statutes.

8. Defendant Lopez is a Vice President and Market Manager for Cumulus and General Manager for WABC. Upon information and belief, Defendant Lopez currently resides in New York, New York. At all relevant times, Defendant Lopez was Plaintiff’s employer within the meaning of all applicable statutes.

9. Defendant McVay is Senior Vice President of Content and Programming for Cumulus. Upon information and belief, Defendant McVay currently resides in Decatur, Georgia. At all relevant times, Defendant McVay was Plaintiff's employer within the meaning of all applicable statutes.

10. Defendant Schwalb is WABC's Program Director. Upon information and belief, Defendant Schwalb is a resident of Berkeley Heights, New Jersey. At all relevant times, Defendant Schwalb was Plaintiff's employer within the meaning of all applicable statutes.

11. Non-party Cumulus owns WABC and Plaintiff's employment agreement described herein was with Cumulus. Although Cumulus was also Plaintiff's employer within the meaning of all applicable statutes, as Cumulus filed for Chapter 11 reorganization on November 29, 2017, it is not named as a party in this action pursuant to the automatic stay imposed by 11 U.S.C. § 362.

FACTUAL ALLEGATIONS

I. Mr. Wolf's Employment with Defendants and Cumulus

12. Beginning in approximately December 1996, Plaintiff began to provide his services for Imus in the Morning, frequently appearing on the Show as a sports contributor.

13. Although the Show was briefly cancelled in April 2007 following a well-publicized controversy wherein Imus referred to players on the Rutgers University women's basketball team as "nappy-headed hos," in approximately December 2007, Imus in the Morning returned to the air full-time on WABC.

14. Shortly after the Show's return to the air on WABC, Mr. Wolf re-joined Imus in the Morning as the Show's regular morning sports anchor.

15. As had been the case for the entirety of Mr. Wolf's broadcasting career, whenever he appeared on Imus in the Morning, he was captivating, well received and a highly respected voice in the sports world. Furthermore, over the course of a nearly 20-year period working with Imus, from approximately 1996 through 2016, Mr. Wolf never missed a show other than for scheduled vacations.

16. Nevertheless, upon information and belief, Imus in the Morning was responsible for approximately one-third of WABC's entire revenue, and, as a result, Imus was routinely left to call the shots, with the other Defendants authorizing and assisting in any and all of his decisions or actions, including the unlawful discriminatory acts described herein.

II. Mr. Wolf's Employment Agreement and Negotiations

17. When Plaintiff first rejoined Imus in the Morning in approximately December 2007, he provided his services for the Show from WABC's studios in New York, New York.

18. In approximately December 2015, Plaintiff requested permission to begin providing his services to the Show from his home in Naples, Florida, and not from WABC's studios in New York.

19. Defendants Imus and Lopez gave Mr. Wolf permission to relocate and continue providing his services to the Show from his home in Naples, Florida.

20. When Mr. Wolf first relocated to Florida, his employment agreement (the "Employment Agreement") provided for an annual salary of \$195,000.00. Plaintiff's Employment Agreement further provided that, in the event Defendants terminated Mr. Wolf without cause, Mr. Wolf would receive 26 weeks of severance pay.

21. Beginning in approximately October 2016, Defendant Schwalb initiated discussions to re-negotiate Mr. Wolf's Employment Agreement.

22. In order to remain a part of the WABC team and continue providing his services for Imus in the Morning from Florida, Mr. Wolf agreed to a significant reduction in his salary, from \$195,000 per year to \$80,000 per year.

23. In an October 17, 2016 email, Schwalb confirmed the terms of Mr. Wolf's new employment agreement, including that Plaintiff's new salary would be \$80,000.00, effective January 1, 2017. Schwalb's October 17, 2016 email further stated, "[w]e will retain the 26 week 'current salary' severance language from section 3 of your current agreement."

24. Plaintiff responded to Schwalb's October 17, 2016 email the same day, simply stating, "Confirmed."

25. On October 18, 2017, Schwalb acknowledged Plaintiff's confirmation, writing, "Thank you Warner, very much."

26. Although Plaintiff and Schwalb briefly discussed the location from which Mr. Wolf would provide his services during the course of negotiating Plaintiff's new employment agreement, it was neither contemplated nor expected – much less required – that Mr. Wolf would provide his services from WABC's studios in New York.

27. Furthermore, neither Schwalb's October 17, 2016 offer nor his October 18, 2016 confirmation of Mr. Wolf's acceptance made any reference to Mr. Wolf providing his services from WABC's studios in New York.

III. Defendants Discriminatorily Terminate Mr. Wolf Because of His Age

28. Before Plaintiff's new employment agreement went into effect, Defendants terminated Mr. Wolf's employment and replaced him with Sid Rosenberg, a sportscaster decades younger than Mr. Wolf.

29. On October 31, 2016 – less than two weeks after Mr. Wolf confirmed the terms of his new employment agreement with Schwalb – Imus sent Mr. Wolf an email stating that Imus “did not think [Mr. Wolf] doing the sports from Florida was working.” Imus wrote, “You asked me if I was ok with you doing sports from Florida. I said I was. We tried it. It sucks.” Imus concluded his October 31, 2016 email stating, “If you’re in the studio in New York . . . it’s terrific. Anything else is not.”

30. At the time of his termination, Mr. Wolf was 78 years old.

31. To the shock of Mr. Wolf’s co-workers and WABC listeners, Mr. Wolf announced that his November 4, 2016 broadcast would be his last.

32. However, Defendants’ proffered basis for terminating Mr. Wolf was blatantly pretextual, as Imus acknowledged in his October 31, 2016 email that he had previously approved Mr. Wolf working from Florida, and Mr. Imus himself had provided his services for the Show from his home in Texas. To that end, during the recent renegotiation of Mr. Wolf’s employment agreement, Defendants never stated that Mr. Wolf providing his services for the Show from Florida was problematic, and there was no requirement that he return to New York in order to remain with the Show.

33. Furthermore, the quality of equipment that Mr. Wolf used in Florida made it nearly impossible to tell that he was not located in New York, such that Imus routinely asked whether Mr. Wolf was located in Florida or New York. Indeed, after Defendants terminated Mr. Wolf’s employment, on December 26, 2017, Mr. Wolf did a sports broadcast from his home in Naples, Florida for WOR radio – a station located in New York, New York – with perfect sound clarity and no indication that he was not present in the studio.

34. Finally, rather than actually offering Mr. Wolf the opportunity to provide his services from New York – a situation that Imus himself described as “terrific” – Defendants simply terminated Mr. Wolf’s employment.

35. In reality, Defendants discriminatorily terminated Mr. Wolf based upon his age.

36. As evidence of Defendants’ discriminatory conduct, by way of example only, Imus once commented that it was “time to put [Mr. Wolf] out to pasture” and “shoot him with an elephant dart gun.”

37. Furthermore, Defendants replaced Mr. Wolf, who was 78 years old at the time of his termination, with Sid Rosenberg, a sportscaster decades Mr. Wolf’s junior who had previously been fired from the Show for making crude remarks about a female celebrity’s breast cancer diagnosis.

38. Upon information and belief, all Defendants were aware of Defendant Imus’s discriminatory comments towards Plaintiff.

39. Furthermore, all Defendants were aware that Plaintiff was being replaced with someone several decades younger than Mr. Wolf.

40. On November 4, 2016 – the same day that Plaintiff announced his termination from Imus in the Morning – the New York Daily News published an article titled, “Sportscaster Warner Wolf booted from ‘Imus in the Morning’ show” (the “Article”). The Article states that, when asked why he was leaving the Show, Plaintiff responded, “You’d have to ask Imus that question.”

41. The following day, November 5, 2016, Imus sent Plaintiff an email accusing him of lying in the Article, and ominously threatened Mr. Wolf by stating, “don’t go to war with me.”

42. Furthermore, after Defendants unlawfully terminated Mr. Wolf's employment, Mr. Wolf contacted Defendant McVay to remind him of the Company's obligation to pay him severance pursuant to the Employment Agreement and to inquire whether McVay could assist in procuring another role for Plaintiff, either at WABC or another Cumulus-owned station. Although McVay told Mr. Wolf he would "see what he can do" with respect to finding Plaintiff another role, upon information and belief, Imus ensured that Plaintiff would not be re-hired by any Cumulus station, and McVay failed to take any further action to remedy Defendants' discriminatory conduct. Indeed, when McVay ultimately contacted Mr. Wolf over a year later, it was only to inform Plaintiff that McVay had heard a reference to Mr. Wolf on the popular television show "This Is Us."

43. Adding insult to injury, despite Defendants' clearly discriminatory and arbitrary termination of Mr. Wolf's employment, Cumulus refused to pay him the severance to which he is entitled to receive pursuant to the terms of his Employment Agreement. To that end, although Plaintiff reminded Schwalb in a November 2, 2016 email that he was entitled to receive 26 weeks of severance pay at his then-current salary of \$195,000.00, Defendants' actions resulted in Cumulus breaching its severance payment obligations arising under the Employment Agreement.

FIRST CAUSE OF ACTION
(Discrimination in Violation of the NYSHRL)
Against All Defendants

44. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

45. Defendants have discriminated against Plaintiff in violation of the New York State Human Rights Law ("NYSHRL") by denying him equal terms and conditions of employment, including, but not limited to, terminating his employment because of his age.

46. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which he is entitled to an award of monetary damages.

47. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

SECOND CAUSE OF ACTION
(Aiding and Abetting Violations of the NYSHRL)
Against Defendants Lopez, McVay and Schwalb

48. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

49. Defendants Lopez, McVay and Schwalb knowingly or recklessly aided and abetted the unlawful employment practice and discrimination against Plaintiff in violation of the NYSHRL.

50. As a direct and proximate result of Defendants Lopez, McVay and Schwalb's unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which he is entitled to an award of monetary damages.

51. As a direct and proximate result of Defendants Lopez, McVay and Schwalb's unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and

continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

THIRD CAUSE OF ACTION
(Discrimination in Violation of the NYCHRL)
Against All Defendants

52. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

53. Defendants have discriminated against Plaintiff in violation of the New York City Human Rights Law (“NYCHRL”) by denying him equal terms and conditions of employment, including, but not limited to, terminating his employment because of his age.

54. As a direct and proximate result Defendants’ unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which he is entitled to an award of monetary damages.

55. As a direct and proximate result of Defendants’ unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

56. Defendants’ unlawful and discriminatory actions constitute malicious, willful, wanton and/or reckless indifference to Plaintiff’s protected rights under the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION
(Aiding and Abetting Violations of the NYCHRL)
Against Defendants Lopez, McVay and Schwalb

57. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

58. Defendants Lopez, McVay and Schwalb knowingly or recklessly aided and abetted the unlawful employment practices and discrimination against Plaintiff in violation of the NYCHRL.

59. As a direct and proximate result Defendants Lopez, McVay and Schwalb's unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which he is entitled to an award of monetary damages.

60. As a direct and proximate result of Defendants Lopez, McVay and Schwalb's unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

61. Defendants Lopez, McVay and Schwalb's unlawful and discriminatory actions constitute malicious, willful, wanton and/or reckless indifference to Plaintiff's protected rights under the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Tortious Interference with Contractual Relations)
Against All Defendants

62. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

63. Plaintiff had business relations with non-party Cumulus Media, Inc. in the form of his employment contract.

64. Defendants were aware of Plaintiff's employment agreement with Cumulus.

65. Defendants intentionally procured Cumulus's breach of the Employment Agreement by wrongfully and unlawfully terminating his employment with Cumulus.

66. Defendants' actions caused Cumulus to breach its Employment Agreement with Plaintiff.

67. As a result of Defendants' tortious interference with Plaintiff's Employment Agreement, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the State of New York and the City of New York;

B. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;

C. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages;

D. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including,

but not limited to, compensation for his severe mental anguish and emotional distress, humiliation, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and emotional pain and suffering and any other physical and mental injuries;

E. An award of damages to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to his professional and personal reputations and loss of career fulfillment;

F. An award of punitive damages;

G. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law; and

H. Such other and further relief as the Court may deem just and proper.

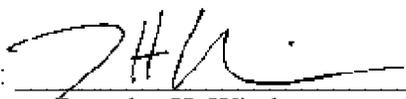
JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: February 15, 2018
New York, New York

Respectfully submitted,

WIGDOR LLP

By: 

Douglas H. Wigdor
Kenneth D. Walsh

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
dwigdor@wigdorlaw.com
kwalsh@wigdorlaw.com

Counsel for Plaintiff